

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12071 of 2019

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Nand Kishore Prasad S/o Sri Geeta Prasad R/o of Mohalla- Adarsh Nagar,
P.s.- Barihat, Distt.- Purnea, Director, M/s Aesch-Apius Pharmaceuticals Pvt.
Ltd.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health,
Bihar, Patna
2. The Addl. Cheif Medical Officer -cum- District programme Officer (Bliend)
Purena

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Subodh Prasad, Advocate
For the Respondent/s : Mr. Nagendra Prasad Yadav (S.C.23)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-08-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

“1. That this is an application for
issuance of an appropriate order or direction,
directing the Respondent No. 2 Addl. Chef
Medical Officer cum District Programme Officer
(Blind) Purnea to pay admitted dues with 15%
interest to petitioner who is paying thirty (30)
thousand interest per month of the Capital amount

Rs. 12,06,240.00.”

In support of his contention, learned counsel for the petitioner refers to and relies upon the decisions rendered by learned Single Judge of this Court in the case of Ramesh Shankar Pandey vs. The State of Bihar and Ors., reported in 2011(1) PLJR 692; Sudhir Prakash Vs. The State of Bihar & Ors., reported in 2010 (2) PLJR 209; Kailash Sharma Vs. The Patna Municipal Corporation & Ors, reported in 2009(2)PLJR 378; J.S. Company vs. Union of India and Ors., reported in 2009(2)PLJR 706; Naw Bharat Jagriti Kendra Mohalla Congress Maidan vs. Patna Municipal Corporation, reported in 2009(2)PLJR 477; Help vs. Patna Municipal Corporation and Ors., reported in 2009(2)PLJR 770; Anil Kumar Pandey Vs. The State of Bihar & Ors. Reported in 2008(2)PLJR 199; Krishna Choudhary & Ors. Vs. The Bihar Rajya Jal Parishad, Reported in 2008(2)PLJR 615; Mundrika Singh vs. The State of Bihar and Ors., Reported in 2008(2)PLJR 670.

The issue, subject matter of the present petition, is non-payment of dues of the articles supplied by the petitioner to the respondent no. 1.

The State, while admitting the work order being placed upon the petitioner, has raised a dispute with regard to

the nature of the material supplied in terms of the supply order. In paragraph 5 of the counter affidavit, the respondents have averred as under:-

“5. That it is respectfully submitted that in the year 2018 several works orders were given to the petitioner’s firm on same date for supply of medical instruments and in view of the same different medical tools were supplied by the firm but since work orders appear to be not in tune with the law and hence guidelines have been sought from the Civil Surgeon, Purnea in this regard”

Further, in paragraph 8 of the counter affidavit, the respondents have averred as under:-

“8. That as regard statement made in paragraph No. 7 to 12 it is submitted that on 08.03.18 vide different Letter Nos. 51, 68, 69 authorities have given work order of more than 11 lacs in which work orders ought to have been given through tender but ignoring the same work order has been given to the petitioner’s firm which is against the government purchase rule and hence after getting guidelines payment will be made to the petitioner.”

At this point in time, we may also note the averments

made in para-9 of the very same affidavit, wherein, it stands averred that “the payment towards supply of the claims will be made only after clearance from the Superior Authority, for the reason that Court order has not been taken in accordance with law.”

The respondents have already refuted the petitioner’s claim of payment of the dues vide communication dated 01.11.2018, Annexure-A, Page-9 annexed along with the said affidavit.

In this view of the matter, we are afraid, the ratio laid down in the decisions, referred to supra, is inapplicable to the attending facts and circumstances. Disputed questions of fact cannot be adjudicated upon in a writ petition filed under Article 226 of the Constitution of India and are best left to be adjudicated by an appropriate authority having competent jurisdiction.

It is open for the petitioner to take recourse to all remedies which are equally efficacious, as are available in accordance with law.

Needless to add, period for which the petitioner has been pursuing remedies before this Court shall be excluded for the purpose of computing limitation.

The present petition stands disposed of.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	